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PUBLIC MEETING  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA PROPOSES PLAN FOR CONTAMINATED GROUND WATER  
TOMAH MUNICIPAL SANITARY LANDFILL

Date: June 24, 2003  
Time: 7:00 p.m. to 8:20 p.m.  
Location: 819 Superior Avenue, Tomah City Hall  
Tomah, Wisconsin

Reported by: Pamela J. Franz  
Benchmark Reporters, Inc.

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10

11                   KEY PEOPLE IN ATTENDANCE:

12 Bri Bill, Community Involvement Coordinator, EPA

13 Denise Boone, Remedial Project Manager, EPA

14 Tim Thurlow, Counsel, EPA

15 Denise Battaglia, Chief, Community Involvement Section, EPA

16 Luanne Vanderpool, Geologist, Superfund Division, EPA

17 Roger Schumer, Project Manager, Environmental Remediation International Paper

18 Eileen Kramer, Hydrogeologist, Remediation Redevelopment

19 Program, Wisconsin Department of Natural Resources

20 Chuck Warzecha, Health Risk Assessor, Wisconsin Department

21                   of Health & Family Services

22 Brian Sandberg, Project Manager, Conestoga-Rovers & Assoc.

23 Ron Frehner, P.E., Vice President, Conestoga-Rovers & Assoc.

24

25

1 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 PUBLIC MEETING convened in the Tomah City Hall, 819  
3 Superior Avenue, Tomah, Wisconsin, on the 24th day of  
4 June, 2003, at 7:00 p.m., Ms. Bill presiding.

5 \* \* \* \* \*

6 MS. BILL: Okay. We're going to go ahead and  
7 get started. The Environmental Protection Agency is  
8 here this evening to present our proposal for  
9 contaminated groundwater resulting from the Tomah  
10 Municipal Sanitary Landfill site.

11 We're here to make a presentation, answer your  
12 questions, and also get your comments on our proposal as  
13 well as some of the other options that we looked at but  
14 are not recommending at this point.

15 My name is Bri Bill, and I'm the Community  
16 Involvement Coordinator with EPA. There are several of  
17 us here from EPA, and we're out of the Chicago office.

18 Most of you probably know that we are in the middle  
19 of a public comment period to accept written comments on  
20 our proposal. If you did not get one of our fact sheets  
21 in the mail, there's a fact sheet in the back. There's  
22 also some other handouts. And please make sure that you  
23 sign in so that you're on the mailing list from now on.

24 I want to just mention right off that we are  
25 extending the deadline for written comments an

1 additional two weeks. We're going to accept written  
2 comments until July 24th, and that's because, as it  
3 turns out, some of our mailings came back to us. We  
4 had -- some of the addresses had changed since the last  
5 time we had made a mailing and so not everybody got  
6 theirs right away so, hopefully, they have by now.

7 There are a number of old landfills in Tomah, but  
8 tonight is just about the Tomah Municipal Sanitary  
9 Landfill, and we're going to talk primarily about the  
10 contamination that is under private property that has  
11 left the Tomah site itself.

12 You may remember that we were here in 1997 and did  
13 a public meeting where we made a proposal on how to deal  
14 with the landfill waste and the gas extraction system,  
15 and we'll talk just briefly about what was done there.

16 I'll just go over the agenda briefly, and there's  
17 also an agenda in the back. We're going to make a  
18 presentation for about a half hour, then we will open  
19 the floor to questions, and we'll answer as many of  
20 those questions as we possibly can. Then we will  
21 proceed to a comment period.

22 During the question and answer, we will answer  
23 questions. During the comments, what we're looking for  
24 is your opinion about the proposal that we're making.  
25 If there's another proposal you'd like us to consider,

1 we're interested in hearing that too.

2 During the comment time, we are only going to  
3 listen. We won't be responding. We'll be responding  
4 later in writing, and I'll explain that a little bit  
5 later.

6 I just want to let you know too that the meeting is  
7 being transcribed. There will be a written record of  
8 the meeting. We have a court reporter here.

9 The City of Tomah is also videotaping the meeting,  
10 and it will be played, I understand, on the cable access  
11 later. So when it comes time to, you know, ask a  
12 question or make a comment, we ask that you come to the  
13 microphone and state your name and spell the name so the  
14 court reporter has it correct.

15 I'll just make a few introductions, and then we'll  
16 start with the presentation. Denise Boone is our EPA  
17 remedial project manager; Luanne Vanderpool is the site  
18 geologist, also with EPA; Tim Thurlow, in the back -  
19 raise your hand - is our attorney for EPA; Denise  
20 Battaglia is also with the Public Affairs office; Eileen  
21 Kramer, who is with the Wisconsin Department of Natural  
22 Resources out of the Eau Claire office; Chuck Warzecha,  
23 in the back, is with the Department of Health & Family  
24 Services out of Madison.

25 We also have various city officials here if you've

1 got questions regarding anything pertaining to the water  
2 lines. And one other person, Ron Frehner, who is with  
3 Conestoga-Rovers & Associates, is one of the contractors  
4 who did the work on the landfill and is continuing to  
5 work on the groundwater contamination.

6 Okay. I'm going to turn this over to Denise. I'm  
7 going to ask that you please hold any questions that you  
8 have until -- until after the presentation. Thanks.

9 MS. BOONE: Thank you, Bri. She did introduce  
10 me, but my name is Denise Boone. I'll say it again.  
11 And I'm new to this project. I've only been assigned to  
12 this project for about a year. I've worked with EPA for  
13 some years though. I've been with EPA for about 14  
14 years. I started there as a chemist supporting project  
15 managers, and I've been a project manager for about  
16 eight years.

17 EPA looked at five alternatives, and we recommend  
18 the monitored natural attenuation. This involves  
19 relying on the natural processes to clean the water;  
20 routinely monitoring the wells; placing restrictions on  
21 the use of groundwater, which means that we will  
22 restrict the use of groundwater in areas where water  
23 could become affected in the future; testing of Deer  
24 Creek; and a contingency plan so that if the natural  
25 processes fail, we need to put something else in place.

1       The other four alternatives that we looked at were  
2       no further action, oxygen enhancement using  
3       slow-releasing compounds, oxygen enhancement using  
4       biosparging, and groundwater pump and treat.

5       I'll talk about these more in detail a little bit  
6       later, but one thing you should know is that all of  
7       these alternatives except no further action involve  
8       testing the groundwater, testing Deer Creek, and putting  
9       restrictions on the groundwater use.

10       Let me give you a little history and tell you what  
11       we've done at the site so far. Bri has already talked  
12       about back in 1997 that we had a meeting very similar to  
13       this, and it basically dealt with just the landfill  
14       itself. What should we do with the landfill because  
15       contaminants were leaking into the groundwater.

16       So it was decided that we would put a cap on the  
17       landfill, and this -- we have found that this has  
18       reduced the leaking of contaminants into the water.

19       We also expanded the gas extraction system at that  
20       time, and we made a decision that, you know, we really  
21       don't have enough information about the groundwater,  
22       that we're going to continue to monitor and then, in the  
23       future, come up with a decision about that. And this is  
24       the purpose of this meeting.

25       I have a few photos of the landfill. This is one



1 of the photos. This is a basic view of the landfill,  
2 and you can see one of the extraction wells in the  
3 background.

4 The next one is just one of the monitoring wells  
5 that's along the boundary of the landfill.

6 And this last one is workers installing the gas  
7 extraction system, the piping.

8 Our focus of tonight is the -- are the groundwater  
9 studies. I will talk about the limits of the plume,  
10 meaning how far does contamination extend; I'll talk  
11 about whether or not the plume is moving and in what  
12 direction; I'll talk about what chemicals we found out  
13 at the site and at what levels; I'll talk about whether  
14 or not the natural processes are working to clean up the  
15 groundwater.

16 We began monitoring -- our full-scale monitoring in  
17 July of 2000, and we've tested residential wells, we've  
18 tested the monitoring wells in the contaminated area and  
19 outside the contaminated area.

20 We also did a vertical aquifer study back in the  
21 fall of this -- of last year, and what that involved was  
22 that we wanted to figure out where is the center of the  
23 plume. We wanted to see how wide it was, and we wanted  
24 to see how deep it was. And with all this monitoring,  
25 we wanted to see if the natural processes were working.

1       Here's an example of someone testing one of the  
2       many monitoring wells that we have out there.

3       What are the limits of the plume. Is the plume  
4       moving and in what direction. The plume extends  
5       1600 feet from the boundary -- from the property  
6       boundary. It extends to the northeast. The groundwater  
7       moves to the northeast, and we have found that the  
8       contamination is not expanding.

9       This diagram really shows what's going on, and you  
10      have -- this is one of the handouts so if you're not  
11      able to see this very well, but let me kind of orient  
12      you to what's going on here.

13      This square area here, that is actually the -- what  
14      we -- the 40 acres, that's what we actually call the  
15      site. The landfill is on the southern part of the site,  
16      and that's about 18 acres. To the south of the  
17      landfill, we have the Sunnyvale subdivision. This is  
18      North Avenue. This is Deer Creek there. Here is County  
19      Highway ET, and here is Flatter Avenue. (Indicating.)

20      I said that the plume extends to the northeast.  
21      The highest concentration of the contamination is found  
22      right here in the center where you see the red, and as  
23      you move out towards that -- from that center, it  
24      becomes less and less -- the concentration becomes less  
25      and less. (Indicating.)

1       There are two types of contaminants that we've  
2       looked for out at the site. They fall into two  
3       categories: Volatiles and metals.

4       Where volatiles are compound, they easily evaporate  
5       in air. Something that you may have in your household  
6       that's -- that we consider a volatile would be  
7       fingernail polish remover, paint remover, the  
8       turpentines, the natural spirits. Those fall into the  
9       category of volatiles.

10       The main volatiles that we found out on the site  
11       that are still a concern are vinyl chloride and benzene.  
12       We're finding vinyl chloride as high as 680 micrograms  
13       per liter. What this means is if I compare this to  
14       EPA's safe drinking water level, it is 340 times higher  
15       than the EPA's drinking water level. Benzene is 61  
16       micrograms per liter. It is 12 times the level  
17       considered safe under the drinking water standard.

18       We are finding some other volatiles out there, but  
19       they are not as a concern as these two compounds.

20       The metals that we're finding out on the site are  
21       arsenic, iron, manganese, and thallium. Now, these are  
22       basically found on the site. Whenever I say on the  
23       site, I mean that 40-acre area. It's beyond the  
24       landfill but still in the 40 acres. But, of course,  
25       that's something that's going -- that we are finding

1 offsite.

2 We are seeing iron and manganese in one well within  
3 the plume area, and we're seeing it in wells -- a few  
4 wells outside the plume area. So what this tells us is  
5 that these metals could be natural occurring. This is  
6 something we will continue to monitor for.

7 Are the natural processes cleaning the water. Yes.  
8 The presence and the absence of certain chemicals tell  
9 us that something is happening, that the ground water is  
10 being cleaned up. One thing, the absence of a lot of  
11 the volatiles that were initially placed in the  
12 landfill, we're not seeing them so that's good.

13 The presence of vinyl chloride shows that these  
14 other volatiles are breaking down. And then the  
15 presence of carbon dioxide and chloride shows us that  
16 the vinyl chloride is breaking down. So, yes, the  
17 conditions are favorable for natural attenuation.

18 In conclusion, we found that the plume has not  
19 changed much from when we began monitoring back in July  
20 of 2000. The landfill cap is reducing the leaking of  
21 contaminants into the groundwater. And, yeah, we're  
22 seeing high levels of vinyl chloride and benzene, but we  
23 know that the natural processes are breaking them down.

24 We are concerned about the contamination being so  
25 close to Deer Creek, and this is something that we will

1 monitor.

2 EPA always looks at the risks to people and to the  
3 environment. And we did a risk study back in our  
4 initial investigation, and we found that people that are  
5 drinking, bathing, or showering in contaminated water  
6 are at risk if the levels are high enough.

7 Our studies show that if a person -- if people are  
8 exposed to the highest levels of contaminants that we  
9 found at the site, that three out of a hundred people  
10 could get cancer over a lifetime, if they're exposed  
11 over a lifetime.

12 And that is if people were exposed, but people are  
13 not exposed because no one is currently drinking  
14 contaminated water within the area. And, as a matter of  
15 fact, the City extended municipal service water to the  
16 residents of the Sunnyvale subdivision back in 1993, and  
17 we're currently preparing to extend the waterline again  
18 to residents along the Flatter Avenue area. And this is  
19 to -- just -- this is to prevent any exposure in the  
20 future.

21 Risks to the environment. Damage to plants and  
22 animals in Deer Creek and the wetlands could occur if  
23 the contaminated groundwater flows into the creek, but  
24 so far we have seen no evidence of this, but we will  
25 continue to watch this.

1       What are the options. What alternatives have we  
2       looked at. We looked at five alternatives. The first  
3       is no action, which has a cost of zero. EPA always  
4       includes a no further action. This is just a way for us  
5       to compare against the others, but what do we mean. No  
6       further action would mean the natural processes of  
7       cleaning up the water, but we wouldn't check the  
8       effectiveness of it. We wouldn't put any -- we wouldn't  
9       do any monitoring of the wells, and we wouldn't test  
10      Deer Creek.

11      Our preferred remedy is -- our preferred  
12      alternative is monitored natural attenuation, which  
13      would cost a little over \$600,000, and this involves  
14      relying on the natural processes to clean the  
15      groundwater; it involves long-term monitoring to make  
16      sure that the -- that the plume is not expanding; it  
17      involves testing Deer Creek. And we predict a time  
18      frame to clean up the water under this alternative as  
19      about 40 to 50 years.

20      The next two, the oxygen enhancement using the  
21      slow-releasing compounds, the estimated cost is  
22      3 million. The oxygen enhancement using biosparging,  
23      the estimated cost is 2.1 million.

24      These two can be discussed together because they're  
25      very similar because we would need to build a system

1     which would add oxygen to the groundwater. One would be  
2     done by adding chemicals that slowly release oxygen.  
3     The other one is basically by adding air which has  
4     oxygen.

5         We would create a treatment zone which would treat  
6     the front edge of the plume, and then we would rely on  
7     natural processes to clean the rest of the plume. Both  
8     of these alternatives take 40 to 50 years.

9         This diagram best describes what we propose would  
10    be the -- all right. Here is the landfill property,  
11    here is the plume, and we would build a treatment zone.  
12    (Indicating.) And these would -- this would mean  
13    constructing a system so that we could inject oxygen  
14    into the groundwater.

15        The last option is groundwater pump and treat,  
16    which has a cost of \$2.6 million. This option also  
17    would take about 40 years to clean up the -- to clean up  
18    the groundwater.

19        This is a pretty good diagram. This is a very  
20    typical diagram of a pump and treat system, but what it  
21    would be is that we would build extraction wells. So  
22    the extraction wells would pull contaminated water out,  
23    send it through a system that would clean it, and then  
24    we would get clean water and it would be discharged into  
25    Deer Creek.

1       When EPA is trying to determine what's going to  
2       work best, we have nine criteria which we must evaluate.  
3       We look at whether or not it's going to protect human  
4       health and the environment, we look at whether or not  
5       it's going to comply with the federal and the state  
6       regulations, we look at whether or not it's going to be  
7       protective over the long term and the short term, we  
8       look at whether or not it reduces the toxicity,  
9       mobility, or volume of the contaminants through  
10      treatment, we look at whether or not the community will  
11      accept this, and this is why we have the public meeting  
12      and the public comment period. We look at whether or  
13      not the state will accept it, we look at whether or not  
14      you could really implement this thing. Is it really  
15      going to work. And, lastly, we look at whether or not  
16      it's cost-effective.

17      How does monitored natural attenuation compare to  
18      the others. Well, except for the no further action  
19      where we would do nothing, all of them will protect  
20      human health and the environment in the short term and  
21      in the long term, all comply with federal and state  
22      regulations, and all of the alternatives would take 40  
23      to 50 years to clean up the groundwater.

24      The oxygen enhancement options and the pump and  
25      treat options are more difficult to implement than the



1 natural attenuation because we would have to build a  
2 system which would have to be built in the wetland area,  
3 which is a very tough terrain for trucks and anything  
4 you try to do in that area, and we are concerned about  
5 the property being privately owned.

6 The oxygen enhancement options and the pump and  
7 treat options are very expensive when you compare it to  
8 natural attenuation with very little benefit in terms of  
9 time. They cost three to five times -- three -- three  
10 and a half to five times more -- they're more expensive  
11 than monitored natural attenuation and yet they all  
12 would take about 40, 50 years to clean up the  
13 groundwater.

14 Our goal is to clean up the groundwater to  
15 Wisconsin standards. Their standards are more stringent  
16 than EPA's which means that their standards are lower,  
17 which means -- in other words, lower is better.

18 For example, with vinyl chloride, EPA's standard is  
19 two; Wisconsin's standard is a hundred times less. Our  
20 standard for benzene is five; Wisconsin's standard is  
21 ten times less. Our recommended alternative will meet  
22 these goals.

23 EPA recommends the monitored natural attenuation  
24 alternative which relies on the natural processes. We  
25 will routinely monitor the wells, we will put

1 restrictions on groundwater use in areas that could  
2 become affected, we would test Deer Creek, and we'd put  
3 a contingency action in place so that if the natural  
4 processes are not doing what they should be, we need --  
5 we know we need to come back and do something else.

6 Bri will talk about the next steps.

7 MS. BILL: Just to finish up, our next step is  
8 pretty much where we are right now. When we get public  
9 comments on July 24th, we'll be reviewing any written  
10 comments we receive, we'll be reviewing the transcript  
11 from tonight's meeting and evaluating the public  
12 comments.

13 At that point, we may decide to keep -- keep our  
14 proposal the way it is and make that final, we could  
15 make minor or major changes to that proposal, or we  
16 could just scrap it altogether and make another. So any  
17 of those things could happen as we look at the public  
18 comments and reconsider the other eight criteria that we  
19 have to use.

20 We will, at that point, issue a final decision  
21 document. It's called a Record of Decision, and it's --  
22 it basically documents our proposal. Part of that --  
23 part of that Record of Decision is something called a  
24 Responsiveness Summary, which is our written response to  
25 the comments that we receive tonight and the comment

1 period and those we receive in writing.

2 Our next step would be to develop legal agreements  
3 with the parties that EPA considers liable for the  
4 contamination and cleanup. Our goal is to have them  
5 actually do the work, do the monitoring, under our  
6 oversight and to some extent the oversight of the  
7 Wisconsin Department of Natural Resources.

8 Under the proposal that we're looking at tonight,  
9 they would be developing a monitoring plan, expanding  
10 the monitoring system that's out there now, and then  
11 implementing the plan.

12 So, at this point, I'm going to ask any of the  
13 agency people to just come and sit here so that we're on  
14 the mike. We're going to turn the podium around, and  
15 we're going to open the floor up to questions. Because  
16 we do have a court reporter and we are videotaping the  
17 meeting, we ask that if you have a question that you  
18 come up to the mike.

19 Okay. Questions?

20 \* \* \* \* \*

21 QUESTION AND ANSWER PERIOD

22 MR. TOM PLEUSS: I'm Tom Pleuss. What are  
23 deed restrictions? What kind of deed restrictions do  
24 you plan on putting on this property and whose property  
25 does it take into consideration?

1 MS. BILL: Tim, could you answer that  
2 question?

3 MR. THURLOW: Well, I think it's properties  
4 which we determine could have contaminated groundwater  
5 underneath them so we wouldn't want to see people  
6 tapping contaminated groundwater.

7 And what the restrictions would involve would be  
8 some kind of legal mechanism in which we would prevent  
9 people from sinking wells which could have contaminated  
10 groundwater.

11 MR. TOM PLEUSS: Do you plan on compensating  
12 these people for the deed restrictions you put on their  
13 property?

14 MR. THURLOW: Well, I think that the exact  
15 legal mechanism under which we're going to do this is  
16 still something that we'd be exploring. So it could be  
17 something simply as a matter of the City of Tomah  
18 restricting this through some kind of City ordinance.

19 But, you know, the -- otherwise, it -- I think our  
20 plan would be to ask the potentially-responsible parties  
21 to go about implementing a remedy, and that would mean  
22 that they would be attempting to get access to people's  
23 property, including permission to put restrictions on  
24 these deeds.

25 And EPA always says in those situations that

1     gaining access, we would expect them to make reasonable  
2     offers and compensation for that. So if it comes to  
3     that, that could be part of what would be involved, yes.

4           MR. TOM PLEUSS: How -- how -- how far below  
5     the surface is this contamination at now?

6           MS. VANDERPOOL: My name is Luanne Vanderpool.  
7     I'm the geologist from EPA. You're asking how far below  
8     the ground surface the contamination is?

9           MR. TOM PLEUSS: Yes.

10          MS. VANDERPOOL: It varies. It is as deep --  
11     we've found it as deep as 180 feet below the ground  
12     surface up to about probably the highest around 40 feet  
13     below the ground surface.

14          MR. TOM PLEUSS: Around 40 feet -- so between  
15     zero and 40 foot there's nothing?

16          MS. VANDERPOOL: There's clean -- either  
17     there's no water, there's air and soil, or there's soil  
18     and water and the water is clean.

19          MR. TOM PLEUSS: So why are we concerned about  
20     Deer Crick?

21          MS. VANDERPOOL: We want to make sure that  
22     nothing happens when we -- if -- as near as we can tell,  
23     based upon our investigations, the contamination is not  
24     moving from where we have determined it to be. And as  
25     long as that continues to be true, Deer Creek is not at

1 risk. However, it is possible, because I do not have a  
2 crystal ball, that it could move.

3 MR. TOM PLEUSS: Well, I --

4 MS. VANDERPOOL: And if it could move, it  
5 could move not only laterally, but it could move  
6 vertically. For this reason, we're going to make sure  
7 that the creek is not impacted by monitoring, by  
8 testing.

9 I don't think it's going to reach Deer Creek, but  
10 I'm not willing to close my eyes and walk away and not  
11 make sure.

12 MR. TOM PLEUSS: You don't think Deer Crick is  
13 at risk?

14 MS. VANDERPOOL: I don't think so, but that --

15 MR. TOM PLEUSS: But that --

16 MS. VANDERPOOL: -- does not mean that I do  
17 not want to have the data to support.

18 MR. TOM PLEUSS: One of your slides said that  
19 Deer Crick was at risk.

20 MS. VANDERPOOL: It is an area of concern.

21 I'm concerned about it, but it is not at a current risk.

22 There is a no current risk to the creek.

23 As we understand the situation at the site, there  
24 is no future risk, but our approach, to be protective,  
25 is when we're looking at future risks, we continue to

1 monitor.

2 MR. TOM PLEUSS: I'm more concerned because it  
3 runs through my property.

4 MS. VANDERPOOL: Yes. And we don't want you  
5 to be at risk and so that's why we will have monitoring  
6 in place.

7 MR. TOM PLEUSS: You're -- you're all quite --  
8 quite satisfied with this just -- this natural process  
9 that's going on now?

10 MS. VANDERPOOL: Yes. I can understand how it  
11 can seem like it's downright amazing, but a lot of  
12 investigation has been done. A lot of study has been  
13 done, a lot of samples have been taken, a lot of people  
14 spent a lot of time looking at the results to come to an  
15 understanding of what's going on.

16 And it is not a simple investigation. It's not a  
17 simple study. A lot of work went into it. We  
18 scrutinized it very carefully and, yes, I am satisfied.

19 MR. TOM PLEUSS: Where was the plume five  
20 years ago?

21 MS. BILL: Mr. Pleuss, I'm going to ask that  
22 this be your last question. We'll go ahead and answer  
23 this and then let some other people talk --

24 MR. TOM PLEUSS: Okay.

25 MS. BILL: -- and then you can come back if

1     you'd like.

2             Can you repeat your question?

3             MR. TOM PLEUSS: Where was the contamination  
4     plume five years ago or seven years ago or ten years  
5     ago?

6             MR. FREHNER: My name is Ron Frehner. I work  
7     for Conestoga-Rovers, and they're the firm -- the  
8     consulting firm that has been monitoring the groundwater  
9     at the site and in the area of the site.

10            And our best understanding of where the plume was  
11     five years ago is where it is right today, that it  
12     really hasn't been moving or changing in direction or  
13     shape.

14            MR. TOM PLEUSS: So it was just kind of around  
15     in this area five years ago?

16            MR. FREHNER: That's right.

17            MR. TOM PLEUSS: Okay.

18            MS. BILL: Thank you. Would someone else like  
19     to ask a question?

20            MR. JOHN PLEUSS: Yeah. I'm John Pleuss. I'm  
21     his brother there. We got property adjoining each other  
22     so -- do any of you people really know how much stuff  
23     was dumped in that dump? Do you guys have any idea?

24            MS. BILL: Who wants to take a crack at that?

25            MR. FREHNER: I can. Again, I --



1           MR. JOHN PLEUSS: Well, I'll tell you a story  
2   here. That dump started when I was a kid. We used to  
3   go back there in the summertime almost every day. I  
4   watched these different people and companies here dump  
5   stuff in there by the truck and semi load, 55-gallon  
6   barrels of it, and you guys are going to tell me that  
7   this is going to clean up by itself?

8           Do you think that these barrels aren't going to  
9   keep rusting away?

10          You guys don't know how much stuff is in that dump.  
11   Did you guys know there was a tanker load of fuel dumped  
12   out there? Do you guys know that?

13          MR. FREHNER: We know that there's been  
14   reports of that.

15          MR. JOHN PLEUSS: Yeah. There's pictures of  
16   it. Thousands of gallons of fuel dumped out there, and  
17   it was okay to dump it out there by the City of Tomah.

18          What kind of a permit did the City of Tomah have  
19   for this dump? Was it just a solid waste?

20          MR. FREHNER: Do you want the first question  
21   answered first?

22          MS. BILL: Can we answer that question?

23          MR. JOHN PLEUSS: Thank you.

24          MR. FREHNER: In terms of what we know of what  
25   went into the landfill, we know that it operated from

1 around 1959 to 1979, and the majority of the waste in  
2 the landfill is municipal waste, traditional household  
3 trash, kitchen garbage.

4 MR. JOHN PLEUSS: Who told you that?

5 MR. FREHNER: We know that that's what --

6 MR. JOHN PLEUSS: No, you don't.

7 MR. FREHNER: We dug around the perimeter of  
8 the landfill to build the landfill cap. We removed  
9 waste up along the Sunnyvale -- the waste that was up  
10 against the Sunnyvale property.

11 There isn't a lot of records. There weren't  
12 records that were kept from the --

13 MR. JOHN PLEUSS: I was there.

14 MR. FREHNER: -- '50s. But you didn't keep  
15 records.

16 MR. JOHN PLEUSS: I was there. I saw all that  
17 stuff go in there.

18 MR. FREHNER: And we -- are you going to let  
19 me finish?

20 MR. JOHN PLEUSS: Sure.

21 MR. FREHNER: Okay. We gathered as much  
22 information as we could obtain through records of  
23 information.

24 The DNR and the EPA sent out a request for  
25 information from the industry, from the City of Tomah

1 about what went into the landfill. And I don't think  
2 we'll ever know exactly what's in the landfill. I've  
3 heard lots of stories from people that came up to us  
4 when we were building the landfill cap and told stories  
5 just like you are today.

6 And we do know that there was industrial chemicals  
7 in there because we have vinyl chloride, and that's  
8 related to industrial chemicals. We know that there's  
9 just standard landfill leeching in there based on the  
10 chemistry that we see. And the best we can do is what  
11 we do at any landfill, which is to gather the  
12 information and do the best we can with the information  
13 we have.

14 MR. JOHN PLEUSS: Okay. I got a question here  
15 for -- it's kind of for the City of Tomah, but -- I  
16 mean, I talked to the City of Tomah a number of times  
17 here about my property, and I just heard tonight that  
18 before this is going to be all cleaned up, it's going to  
19 be 40 to 50 years?

20 MS. BILL: Yes.

21 MR. JOHN PLEUSS: Well, I'm going to be a long  
22 time dead before that.

23 I've had a couple of appraisals on my property to  
24 sell it. You can't even sell it. Nobody wants to  
25 monkey with it. I had Dale Kliske (phonetic) come up to

1 me last week, and he asked me if I wanted to sell some  
2 of it. I said, sure, Dale. I says, you want to buy  
3 some land that's polluted. He said, I don't want  
4 nothing to do with it, nothing to do with it.

5 I had it appraised by Barian (phonetic) Realty. I  
6 got the paperwork here. It's unsaleable.

7 Who is actually responsible for the dump? Is the  
8 City of Tomah responsible for the dump?

9 MS. BILL: Tim, do you want to try to address  
10 that?

11 MR. THURLOW: Okay. I'm Tim Thurlow. I'm an  
12 attorney for EPA.

13 I mean, responsible -- responsible how? I mean,  
14 EPA responds to sites like this under a federal law, the  
15 Superfund law, the Comprehensive Environmental Response  
16 Compensation and Liability Act.

17 Under that particular law, we can ask parties that  
18 either owned or operated a site where contaminants  
19 were -- hazardous substances were released to be -- to  
20 pay for the cleanup; we can ask parties that disposed of  
21 hazardous substances in the landfill to help pay for the  
22 cleanup; we can ask parties that transported waste  
23 there, if they chose the site, to pay for the cleanup.

24 That law, though, is only directed towards paying for  
25 cleanups.

1       If you're asking, as a private citizen, I've got  
2       property now that's worth less than it would be if it  
3       were clean, who's responsible for that, that, I can't --  
4       you need to go and talk to your own counsel about that.  
5       That comes under the typical kinds of private court  
6       actions that take place every day. If your property was  
7       damaged by someone else, what would you do and who is  
8       responsible for it.

9       So the only kind of point I'm trying to make here  
10      is to make a distinction between the federal  
11      government --

12         MR. JOHN PLEUSS: I'm not saying the EPA was  
13      responsible for the dump.

14         MR. THURLOW: I know.

15         MR. JOHN PLEUSS: But the City of Tomah  
16      operated it.

17         MR. THURLOW: Right.

18         MR. JOHN PLEUSS: Okay. Then they should be  
19      responsible.

20         MR. THURLOW: Well, the agency has held them  
21      responsible for --

22         MR. JOHN PLEUSS: Okay.

23         MR. THURLOW: -- helping to pay for the  
24      cleanup.

25         MR. JOHN PLEUSS: Why can't I get anything?

1 MR. THURLOW: Well, see, that's something that  
2 you will have to kind of work out yourself because --

3 MR. JOHN PLEUSS: The City of Tomah --

4 MR. THURLOW: The reason is the federal law --

5 MR. JOHN PLEUSS: I know. Right.

6 MR. THURLOW: -- regulates that. That comes  
7 under the typical kinds of tort system that you have in  
8 the state of Wisconsin. If your property was damaged by  
9 somebody else, what would you do? I mean, what would be  
10 your recourse at law. You'd have to go see an attorney  
11 and see about, you know, what sort of case you have.

12 MR. JOHN PLEUSS: Do you think, though, the  
13 City of Tomah should be responsible for it? I mean,  
14 there should be no haggling about it.

15 MR. THURLOW: Well, see, I'm -- wouldn't --

16 MR. JOHN PLEUSS: Right. Right. Right.

17 MR. THURLOW: -- want to offer an opinion  
18 about that.

19 MR. JOHN PLEUSS: I mean, there should be no  
20 haggling about it, should there be, Chuck? You guys  
21 operated that dump, you polluted my property, and you  
22 guys don't want to do nothing.

23 I've talked to John Rusch a lot of times, and  
24 nothing.

25 MS. BILL: If the City would like to respond,

1 feel free to do so. Otherwise, we're going to move on.

2 Okay. Are there other questions?

3 MR. FRISKE: Yeah. I'm Larry Friske. I live  
4 on Flatter Avenue. I got a lot of questions because a  
5 lot of the questions I have has not been answered by the  
6 City of Tomah.

7 You also stated that you're going to have the City  
8 make City ordinances to help out on this project. The  
9 biggest problem I've got is I don't live in the city. I  
10 live in the Township of La Grange. Well, where are they  
11 going to affect me?

12 What ordinance are you going to affect on my  
13 property or even Tomah -- the City of Tomah, they're  
14 going to do that? I asked the mayor, I want to see it  
15 in writing. I still have not to this day received  
16 anything back from him. I've been sitting here for  
17 months since the last meeting waiting for these  
18 questions to be answered.

19 This gentleman just asked you guys why isn't the  
20 City doing something about this. Now, if the City would  
21 have had a gas station leaking barrels, contaminated  
22 property, you would require them to clean up the waste  
23 in that area. Just because their waste went over into  
24 his property doesn't mean they're not responsible for  
25 it. Why are they not going over there and cleaning it

1 up?

2 You said you guys got the equipment to do it. You  
3 have this oxygenized stations, a treatment system. Put  
4 it on his property, pump the water, clean it up. But  
5 basically I want to know who wants to answer the  
6 questions about what City ordinances are going to be  
7 applied to Flatter Avenue?

8 MS. BILL: Is that something we can answer  
9 tonight?

10 MR. THURLOW: Well, I mean, assuming that --  
11 assuming that Flatter Avenue is in the area in which we  
12 would want to prevent pumping of water, then, you know,  
13 it would have to be a question as to, you know, what  
14 legal mechanisms are available to do that.

15 If you're telling me that the City of Tomah doesn't  
16 have the legal capacity to achieve that on your  
17 property. For example, if we're assuming that, you  
18 know, such a control is necessary, then we'd have to  
19 figure out some other legal mechanisms.

20 For example, trying to put a restriction on your  
21 deed for example. So, I mean, there's -- there's more  
22 than one way to get at these things. I mean, the -- so,  
23 I mean -- but the objective would be the same. Namely,  
24 to prevent water being pumped that ought not to be  
25 pumped.



1 MR. FRISKE: Mm-hm.

2 MS. BILL: Okay. Go ahead. Would you like to  
3 ask another question or two?

4 MR. FRISKE: Yes. Basically, it's all up for  
5 the City of Tomah, but I don't see anyone sitting up  
6 there unless you guys want to answer it.

7 The City -- Radcliffe there, he was stating some  
8 different things last meeting about the City ordinances  
9 that were going to be applied to Flatter Avenue  
10 personnel because of the water systems being put in  
11 there.

12 Is that what EPA has decided is going to happen,  
13 that from now on the City of Tomah is going to regulate  
14 Flatter Avenue residents in the City ordinances?

15 MS. BILL: Tim?

16 MR. THURLOW: Well, I mean, I just would go  
17 back to my first statement. I mean, I -- the objective  
18 that we want to achieve is to make sure that there are  
19 legal mechanisms in place to prevent water from being  
20 pumped that ought not to be pumped.

21 MR. FRISKE: Mm-hm.

22 MR. THURLOW: And I don't believe that the  
23 analysis has been done completely to say exactly what  
24 those would be and what would be necessary. Kind of the  
25 bottom line position would be to say, well, we'll change

1 people's deeds, we'll ask the responsible parties to go  
2 and get permission to change people's deeds such that  
3 there would be an agreement, a requirement as a  
4 condition of the deed somehow that the water not be  
5 pumped.

6 So, you know, that -- but there are other ways to  
7 do it too. There could be City ordinances -- now if  
8 you're going to say that, well, you don't believe that  
9 the City of Tomah has the legal ability to regulate  
10 that, well, that may be, and I'm sure that will come out  
11 when we start analyzing what it is that we -- would be  
12 necessary in order to prevent water being pumped from  
13 areas that where it ought not to --

14 MR. FRISKE: Okay.

15 MR. THURLOW: -- be tapped.

16 MR. FRISKE: Then basically, at this point,  
17 you're saying that right now the City has no  
18 jurisdiction whatsoever in the Township La Grange?

19 MR. THURLOW: No. I'm saying that I don't  
20 know what the City's jurisdiction is. I'm just saying  
21 that even if the City doesn't have jurisdiction that  
22 doesn't mean that there are no legal mechanisms that  
23 could be adopted to achieve the objective that is stated  
24 as one the goals of this remedy, which is to prevent  
25 water from being tapped that ought not to be tapped.

1           MR. FRISKE: So basically a lot of the  
2       questions that we're going to ask tonight is not going  
3       to be answered because it's just going to be just a  
4       runaround saying that we don't know or that some later  
5       on down the line it's going to happen or --

6           MR. THURLOW: No. I'm saying that probably  
7       there will be an answer at the time that the remedy  
8       decision is made because you've asked it.

9           MR. FRISKE: Mm-hm.

10          MR. THURLOW: I mean, the fact is that there  
11       will probably be comments on this and questions about  
12       this, and the agency will take those questions and look  
13       into the matter and decide what's what. And at the time  
14       that the remedy is selected, then there will be kind of  
15       a summary called a Responsiveness Summary which answers  
16       those questions, but --

17          MS. BILL: And to ensure that you get a  
18       written response to that question, and it's a very good  
19       question, is either send us a note during our comment  
20       period or when we actually start the comments in a few  
21       minutes.

22          MR. FRISKE: Okay. I sent questions in, eight  
23       pages, prior to this last meeting. I sent comments in  
24       and questions in after the meeting.

25          MS. BILL: Okay. These are comments, you

1 know, pertaining to what the City is doing. We're --  
2 EPA actually has like a formal comment period.

3 MR. FRISKE: Okay.

4 MS. BILL: It started around June 10th and  
5 ends July 24th and so any comments during that time EPA  
6 will respond to them.

7 MR. FRISKE: Okay. So, as a result of that,  
8 you go with what the City has stated already? Are you  
9 guys going to comment on their behalf of all the City  
10 ordinances they're going to regulate on the Flatter  
11 Avenue people?

12 MS. BILL: No. We won't be responding on  
13 their behalf. We'll be responding with what we know,  
14 what our plans are.

15 MR. FRISKE: Okay. So when are we, the people  
16 here, going to get the responses back from the City of  
17 Tomah? That's another question.

18 Now, EPA is in charge of this Superfund site,  
19 correct, and we're supposed to be getting answers back?  
20 I'm wondering when is the answers going to be  
21 answered -- the questions going to be answered? When  
22 are we going to get them?

23 MS. BILL: Would someone from the City like to  
24 respond? Would you turn over the mike?

25 MR. FRISKE: Sure.

1           MR. RADCLIFFE: I'm Rick Radcliffe. I'm the  
2   City Attorney for Tomah. In response to your questions,  
3   Mr. Friske, on the authority of the City to regulate  
4   citizens outside of its boundaries, there's a couple of  
5   different areas that that may entail.

6           First of all, there were a number of residents of  
7   the Township of La Grange that chose to accept municipal  
8   water. That municipal water is part of a public water  
9   system.

10          MR. FRISKE: Mm-hm.

11          MR. RADCLIFFE: And as part of a state law,  
12   that includes enforcement by the City of Tomah. All of  
13   the property owners that hook up to municipal water,  
14   including those in the township or the city, are under  
15   the same set regulations. So, in that sense, any  
16   township members that are currently hooked up to the  
17   municipal water supply do have to follow those  
18   regulations.

19          MR. FRISKE: Okay.

20          MR. RADCLIFFE: With respect to the deed  
21   restrictions, we do have deed restrictions existing on a  
22   large portion of the area that's currently impacted with  
23   property owners that have voluntarily negotiated deed  
24   restrictions over their property with the City of Tomah,  
25   and those have been executed and they have been recorded

1 and they're part of the record.

2 In addition, we do have the power for what's called  
3 extra-territorial zoning where the City can actually  
4 enforce some of its regulations beyond its borders in  
5 the best interest of the community.

6 In addition, we have an ongoing dialogue with the  
7 township to the extent that this is an issue that  
8 affects the public health, not just of the residents of  
9 the city but also residents like yourself in the  
10 township, and we're trying to work together with the  
11 township to follow the plan that's going to protect  
12 everybody.

13 So there's four different areas where, potentially,  
14 township residents are being impacted by regulations or  
15 by direction from the City.

16 MR. FRISKE: Okay. I requested that  
17 information in writing, and it was -- as far as I know,  
18 it's still sitting on the mayor's desk. When am I going  
19 to get a response in writing with all the information  
20 and documentation I requested?

21 MR. RADCLIFFE: Okay. You sent some questions  
22 to the City prior to our meeting on the public water  
23 system --

24 MR. FRISKE: Yep.

25 MR. RADCLIFFE: -- and you'd like that to be

1     responded to in writing. We will do that.

2           MR. FRISKE: And how about the ones that I  
3     also did after the meeting? They're supposed to be  
4     sitting on the mayor's desk. That's the last I have  
5     talked to by Cub Raisin (phonetic) and a person from the  
6     Town and Country.

7           MR. RADCLIFFE: Okay. If you have submitted  
8     written questions to the City, we will respond to them  
9     as soon as we reasonably can.

10          MR. FRISKE: And when would that be, since  
11     it's been over a month?

12          MR. RADCLIFFE: Well, first of all, I didn't  
13     know that you had submitted additional written  
14     questions --

15          MR. FRISKE: Okay.

16          MR. RADCLIFFE: -- or that you wanted a  
17     written response because you were present for the  
18     meeting on the public water.

19          MR. FRISKE: Yep. And that's when those  
20     questions --

21          MR. RADCLIFFE: We will respond to all of your  
22     questions that pertain to the City as soon as we  
23     possibly can.

24          MR. FRISKE: Okay. Next question. Anyone  
25     from the DNR here?

1 MS. KRAMER: Yes.

2 MR. FRISKE: Okay. What is our legal rights  
3 to hooking up that City water system? If we hook up the  
4 City water system, we were told that after we hook up,  
5 we will never ever in our lifetime ever be able to  
6 disconnect from them. Is that true?

7 MS. KRAMER: I don't know that I can answer  
8 that question actually. My name is Eileen Kramer. I  
9 work for the Department of Natural Resources.

10 There is an administrative code that imposes  
11 certain requirements for protection of the water system  
12 including frost connections. There's requirements for  
13 abandoning or getting a permit to keep a private well if  
14 you're hooked up to the water system.

15 In terms of disconnecting and doing -- I mean, I  
16 don't know --

17 MR. FRISKE: Disconnect and reconnect to our  
18 existing wells after this 50-year problem we got here  
19 from the City of Tomah gets rectified. Because I was  
20 told by the City that my well could disconnect ever. He  
21 told me to call a lady in La Crosse, a Whistler. I've  
22 been trying to contact her for a month yet, and I still  
23 have not received a response back.

24 MS. KRAMER: Oh, oh, oh, okay. The private  
25 water supply specialist, Pearl Whistler.



1 MR. FRISKE: Yep.

2 MS. KRAMER: She would be somebody that I  
3 would probably have to consult with, and I certainly  
4 will call her and I have no problem connecting with her  
5 and getting the answers from her.

6 MR. FRISKE: Yeah, because I'd like to find  
7 out what the -- what she -- because I keep on getting  
8 told by the City that these are the things that I'm  
9 going to be forced to do, and I keep on asking, I want  
10 to see it in writing, and I don't get it.

11 MS. KRAMER: Well, there are codes, and I  
12 can't give you specific citations right now, but there  
13 are codes that when you have a public water supply, you  
14 cannot put in private wells.

15 MR. FRISKE: Okay. Then, basically, I'll just  
16 put it out to everybody right now. This is questions I  
17 got. I would like to see all legal documentation  
18 concerning this project presented to me in writing  
19 regarding City, DNR, EPA, all the things that they're  
20 going to hold against me on my property and including  
21 the deeds, water rights, the whole nine yards.

22 So this way it's on TV, it's been court-reported  
23 that I've asked to get all this documentation since I've  
24 been going on for months trying to get all this  
25 information, and I seem not to get anything.

1           MS. KRAMER: I think I already sent you  
2   copies --

3           MR. FRISKE: You sent me a few things, yeah,  
4   but like I said --

5           MS. KRAMER: -- of administrative code that  
6   apply.

7           MR. FRISKE: Mm-hm.

8           MS. KRAMER: And the information you're  
9   looking for is in that administrative code.

10          MR. FRISKE: Yeah. A lot of the stuff I've  
11   been getting from the City is also been told that it was  
12   supposed to be in there for a City ordinance and stuff  
13   like that, which is not. And, like I said, I've been  
14   trying to get a hold of Whistler for over a month yet,  
15   and I still haven't got contacted by her. She had  
16   contacted my wife, told me I'd be back in -- be home at  
17   three o'clock. She didn't get done until 4:30, but she  
18   never failed to return my phone call.

19          So I'd like to get all this, and the record is  
20   being captured here, all that information and  
21   documentation sent to my house. That way I don't have  
22   to keep on trying to do phone calls and chasing down  
23   this information.

24          That also includes the City for any City ordinances  
25   that they wish to try to emplace on the Flatter Avenue

1 citizens.

2 MS. BILL: Okay. Thank you.

3 MR. FRISKE: Thank you.

4 MS. BILL: I think we understand your point.

5 Let's move on and see if others have questions.

6 MR. THORSON: Good evening. I'm Pete Thorson.

7 I'd like to know if your final decision for this  
8 plan that you're proposing to take and clean up this  
9 landfill is appealable? Whatever you decide in regard  
10 to this cleanup, is that the plan we implement? Is  
11 there any appeal process for the landowners for their  
12 right because it's polluted their property?

13 MS. BILL: Tim, would you like to take this?

14 MR. THURLOW: Well, their right to do what  
15 exactly? I mean, the decision -- if you're asking,  
16 well, could the decision that is being proposed here --

17 MR. THORSON: You're planning for natural  
18 attenuation?

19 MR. THURLOW: Right.

20 MR. THORSON: Is that appealable to go to the  
21 next step, which is oxygenation or pumping?

22 MR. THURLOW: Well, the process is this: We  
23 propose this particular remedy. If you have objections  
24 to that remedy, your options are to make comments on it  
25 and submit them during the comment period, explaining

1     why it is that you find the proposed remedy wanting.

2           MR. THORSON: I don't think you understood my  
3     question.

4           MR. THURLOW: But I'm getting to that. If,  
5     then, the agency decides at the end of that that in  
6     spite of your objections to this that the agency is  
7     going to go forward with this remedy, no, you do not  
8     have a right to appeal that.

9           MR. THORSON: So there's not an appeal process  
10    as there traditionally is in any other agency?

11          MR. THURLOW: Well, I don't think that -- I'm  
12    not sure what you're comparing this to. I mean, this is  
13    a remedy decision which has public participation, but  
14    there isn't a kind of legal right to challenge it, no.

15          MR. THORSON: You have the ultimate say?

16          MR. THURLOW: We have the ultimate say about  
17    what the remedy will be, yes.

18          MR. THORSON: Okay. Your quote, "While the  
19    landfill cap installed in 2000 helps from new leaking,  
20    it does nothing for the groundwater already  
21    contaminated." That was in your flyer, correct?

22          MS. BILL: Yes.

23          MR. THORSON: We have City wells halfway to  
24    Tunnel City and halfway to Oakdale because our wells are  
25    failing at a massive rate here in the city. Are we

1 going to allow our children to pump water from Mauston  
2 or Sparta because we're doing nothing here tonight?

3 MR. FREHNER: I can respond to that. Ron  
4 Frehner again.

5 I don't think that the proposed remedy is to do  
6 nothing. If you look at all the options that were  
7 considered and all the technology that's available,  
8 we're still looking at any remedy that would take 40 to  
9 50 years. It took 40 to 50 years to get where it is  
10 today and, unfortunately, mother nature doesn't allow us  
11 to clean things up quickly. It's not like a spill on  
12 the ground that you can dig up. It's in the  
13 groundwater. It's extended 1600 feet beyond the  
14 landfill, and it takes time.

15 The remedy that has been put forward is the remedy  
16 that will allow the aquifer to clean itself up which,  
17 through all the study, has shown this is as effective as  
18 any other remedy.

19 MR. THORSON: You guarantee that?

20 MR. FREHNER: I'm telling you that that's my  
21 professional opinion.

22 MR. THORSON: The EPA is the agency which  
23 regulates the Clean Water Act, correct?

24 MS. BILL: Right.

25 MR. THORSON: You've made comments and you've

1 put out information that your plan for monitored natural  
2 attention [sic] is your opinion the best option,  
3 correct?

4 MS. BILL: That's right.

5 MR. THORSON: Okay. Your other options,  
6 you've taken the position that they are least favorable  
7 because of restrictions that are required because of  
8 implementing them, correct?

9 MS. BILL: That's a part of it.

10 MR. THORSON: Okay. And cost?

11 MS. BILL: Yes.

12 MR. THORSON: Okay. So if we look at the  
13 implementability as far as doing these other options,  
14 the one option states in your information that you can't  
15 do it because it's basically -- you're affecting the  
16 wetlands and, you know, you can't disturb those areas  
17 and wetlands, correct?

18 MS. VANDERPOOL: Luanne Vanderpool again.  
19 We're not saying it can't be done. We were evaluating  
20 relatively which is more implementable, which is less  
21 implementable, assuming implementable is a word.

22 All of them could be done. What price to the  
23 wetlands. Well, perhaps a fairly high price. Perhaps  
24 the wetlands would not be wetlands by the time we got  
25 done running bulldozers through it and building roads

1 and taking out trees and removing the vegetation, but if  
2 it needed to be done, if that was in fact the best thing  
3 to do, it could be done, but at a high cost.

4 A high cost financially and a high cost to the  
5 environment, quite frankly, but we're not in a position  
6 where those have to be done. We have another remedy  
7 which will be as effective and would not require doing  
8 construction in wetlands.

9 MR. THORSON: What cost to the environment is  
10 it by not doing anything and leaving it just sit as  
11 you're doing your monitoring?

12 I'll go on. Section 404 of the Clean Water Act has  
13 an Exemption 20 that states: "Oil or hazardous spills  
14 can be cleaned up and allowed in navigable waterways and  
15 wetlands in order to clean up the contamination." That  
16 gives you an exemption right there so why hide behind  
17 the wetland issue? Are you familiar with the code?

18 MR. FREHNER: I can take that one. That is a  
19 serious -- like Luanne said, this can be done if it's  
20 the right thing to do.

21 I think -- for example, we did a wetland cleanup in  
22 Illinois, but that was surficial contamination that was  
23 easily retrieved. You heard earlier today about how  
24 deep it is and how expansive it is and, again, I think  
25 what Luanne is trying to explain is how much disruption

1 it would take to the wetland to get to it.

2 But I'll go back to the comment I made. There is  
3 no additional benefit. You're still looking at 40 to 50  
4 years no matter what remedy you look at. So, I mean,  
5 you're taking a part of the evaluation and saying the  
6 reason we're not picking biosparging or something  
7 aggressive is because we can't get access to private  
8 land or we're concerned about impacting the wetland.  
9 Those are considerations, but you also need to look at  
10 the fact that it's not going to get you to the end point  
11 any quicker. That's, to me, the real selling point of  
12 our recommendation to select natural attenuation.

13 MR. THORSON: Explain that to Jim Benoit  
14 (phonetic), Citgo station out here, or John Beldy  
15 (phonetic), the Mobile station up here, who both  
16 undertook \$500,000 cleanups. They didn't have an  
17 option.

18 MS. VANDERPOOL: Perhaps -- Luanne Vanderpool  
19 again. I'm not familiar with those particular problems.  
20 I would hope that they had done the investigation to  
21 determine what would be appropriate in terms of cleaning  
22 it up.

23 Frequently, monitored natural attenuation can be  
24 used to clean up underground leaking storage tank-type  
25 pollution, which is frequently the kind of problem



1 associated with gas stations.

2 It's quite common, but it does not work in every  
3 situation. Investigations are done and you determine  
4 whether or not the processes are working, and they just  
5 may not have been. Luck of the draw.

6 MR. THORSON: No. Maybe selective processing.  
7 Thank you.

8 MS. BILL: Well, and the contrast is also  
9 true. We have sites all over the country where we have  
10 a pump and treat system in place, but at this particular  
11 site, that's not going to buy us anything, in our  
12 opinion, after reviewing the groundwater data that we  
13 have and the technologies.

14 MS. VANDERPOOL: Another piece of it is it can  
15 be very expensive to do the investigation to determine  
16 whether monitored natural attenuation will work and so  
17 sometimes the responsible parties will make a decision,  
18 and particularly for a small site such as a gas station,  
19 sometimes they'll make a decision they would rather do  
20 something else and do something rather than spend the  
21 money on an investigation which might show that they  
22 still have to spend the money to do something active.

23 I mean, as I say, I don't know the details of those  
24 particular sites, but in other situations, I've known  
25 those kinds of decisions to be made.

1 MS. BILL: Are there other questions?

2 MR. HOLZLI: My name is William Holzli. I'm a  
3 citizens' advocate from Vernon County, Wisconsin, and  
4 I've been attending these types of meetings with various  
5 government entities for quite a number of years now.

6 I'm in Vernon County for about 14, and I can say  
7 without exception it ultimately ends up as us and them  
8 and, unfortunately -- and we should remember today of  
9 all times in the challenges we face in the world, we're  
10 all in the same position. You may be in our position  
11 next week; we may be in yours.

12 I would like to make one statement for the record,  
13 and that's for the benefit of the people in the audience  
14 and perhaps you as well. State Statute 19.31 is  
15 Declaration of policy. It says that it is declared to  
16 be the public's -- or rather it says that it is declared  
17 to be the public policy of this state that all persons  
18 are entitled to the greatest amount of information  
19 regarding the actions of government -- rather regarding  
20 government from the actions of those officers and  
21 employees who represent them. And it says a  
22 representative government is dependent upon that fact,  
23 and the attorney will agree with me, I'm sure.

24 I would like to address the gentleman's concern  
25 about not being able to get any response from anyone in

1 the city hall. State Statute 19.371 is Petition for  
2 Writ of Mandamus, and the City attorney can correct me  
3 if you want to know. When an individual makes a written  
4 request, that governmental entity being responsible  
5 agent for his or her office has to respond in writing.

6 Now, having said that, I'd like to just ask  
7 Mr. Dunk (phonetic), your logic that the provider, the  
8 initial owner, the operators, whomever may have been  
9 associated with that dump may ultimately end up  
10 financially accountable. Pursuing that logic, can we  
11 assume that the citizen too who contributed waste to  
12 that landfill can ultimately be held financially  
13 accountable?

14 MR. THURLOW: Well, what the statute -- I'm  
15 only talking about what the statute provides. The  
16 statute provides that you can be a liable party if you  
17 contributed hazardous substances to a landfill, but  
18 there are also exceptions when it's a kind of de  
19 micromis amount, which is very, very small amounts.

20 These were some changes that were introduced into  
21 the law in the last year and a half or so. I mean,  
22 if -- you could be a private citizen and if you  
23 contributed a sufficient amount of hazardous substances  
24 to the landfill, you could be a liable party under  
25 the --

1           MR. HOLZLI: My point is that litigation can  
2   pursue to the extent that the citizen themselves have  
3   contributed household waste to that facility can be  
4   ultimately held accountable for contributing to the  
5   contamination of that site, correct?

6           MR. THURLOW: If it was enough -- if it was a  
7   sufficient quantity and if it was --

8           MR. HOLZLI: Well, there's case precedence to  
9   establish that fact. My -- one of the examples I'll  
10   give you is in the east. People who received waste --  
11   liquid waste from a distributor that provided industrial  
12   waste municipal sludge took the product from the  
13   provider under his assurance that it met EPA standards,  
14   DNR standards, and all the other menagerie of standards  
15   that we have to meet. And, ultimately, he was held  
16   accountable in court for contamination of that soil  
17   simply as a recipient. So, to move on -- no. I just  
18   wanted to --

19          MR. THURLOW: Excuse me. I mean, but that may  
20   have been prior to the recent changes in the law.

21          MR. HOLZLI: That may be true, sir.

22          MR. THURLOW: So, you know, I'm not sure that  
23   that would necessarily be the results today.

24          MR. HOLZLI: Okay. I'd like to move on. Can  
25   the EPA impose deed restrictions for third party injury

1 without civil action, or is there an arbitrary power  
2 that usurps private property use?

3 MR. THURLOW: Excuse me. I didn't hear you.

4 MR. HOLZLI: I asked you if the EPA can impose  
5 deed restrictions for third party injury without civil  
6 action, or is there an arbitrary power that usurps  
7 private property use?

8 MR. THURLOW: Well --

9 MR. HOLZLI: I'll save you some time. There  
10 is none. You can be enjoined in civil litigation. Even  
11 though the state and the government has to grant its  
12 permission to be sued, the individual results of action  
13 of its employees are subject to litigation, be it  
14 Mandamus or other civil remedy, correct?

15 MR. THURLOW: I'm not --

16 MR. HOLZLI: Hopefully, it is, sir, because if  
17 it's not, we're all in trouble. I'll just move on.

18 If it's felt by a person with legal standing that  
19 there is a significant health risk, isn't it true that  
20 they can request an injunction or a nuisance abatement?  
21 That would be for the City Attorney, I believe, but I'll  
22 make it short. I can assure you that it is.

23 And my final comment --

24 MS. BILL: Sir, if you wanted to ask a  
25 question, I ask that you allow us to answer it.

1           MR. HOLZLI: Okay. Is it true that if it's  
2   felt by a person with legal standing that it poses a  
3   significant health risk that they can either seek an  
4   injunction or a nuisance abatement?

5           MR. RADCLIFFE: Is it true that a private  
6   party can do that?

7           MR. HOLZLI: A private party with -- an  
8   individual with standing. And the nuisance abatement is  
9   Section 30.204. The injunctions are at 813.01.

10          MR. RADCLIFFE: Your question is can a private  
11   party --

12          MR. HOLZLI: If it's felt by a --

13          MR. RADCLIFFE: -- seek an injunction --

14          MR. HOLZLI: If it's felt by a person with  
15   legal standing. Because you know yourself any suit --  
16   if you don't have legal standing, you know that's  
17   privileged, correct? Standing meaning --

18          MR. RADCLIFFE: It is true that a person with  
19   legal standing can bring an action to seek an injunction  
20   if they feel that they are subject to the public  
21   nuisance?

22          MR. HOLZLI: Or a potential health risk?

23          MR. RADCLIFFE: Well, that would maybe fall  
24   within the category of a nuisance.

25          MR. HOLZLI: Okay. Thank you, sir. I'm not

1     trying to be -- I've been at it so long that it's  
2     usually just you get in one frame of mind.

3         I would like to just make it real brief and maybe  
4     save a couple more questions.

5         MS. BILL: I'm going to let you ask one more  
6     question, and then we'll move on to the next person.

7         MR. HOLZLI: Okay. The next question would be  
8     in your intent to impose deed restrictions on property  
9     that's already been loaded with all the impertinences  
10    and privileges, how can you do that without invoking  
11    partial takings?

12        And if you're not familiar with partial takings,  
13    there's federal suits right now in the state of Oregon  
14    against members of federal entities for depriving an  
15    individual who invests his resource into a potential  
16    resource recoupment and he's deprived of a portion of  
17    that resource -- recovering that portion of his  
18    resource.

19        MR. THURLOW: Well, I think, in the first  
20    instance, you know, EPA's reference would be that we not  
21    be the party that attempts to do this at all. We will  
22    attempt -- I mean, our goal is to have the  
23    potentially-responsible parties bring this about and, as  
24    I said before, that may well involve some compensation  
25    to the landowners in return for agreeing to restrict

1     their properties.

2           MR. HOLZLI: Well, on that same line, you said  
3     that -- the City Attorney said they have some people who  
4     already agreed with deed restrictions so -- and just in  
5     that vein of thought, if they have -- is it going to be  
6     involuntary compliance, or is it strictly voluntary? I  
7     rest at that.

8           MS. BILL: Tim, do you want to respond to  
9     that?

10          MR. THURLOW: It seemed to be for the City  
11     Attorney that he was asking that question.

12          MS. BILL: Oh, okay.

13          MR. RADCLIFFE: Okay. I think your question  
14     was does the City have to pay every time it regulates  
15     the use of somebody's property, and the answer to that  
16     is no.

17          MR. HOLZLI: I didn't ask you --

18          MR. RADCLIFFE: Government, by it's nature,  
19     regulates property. It has the right to regulate  
20     property. Everybody's property is zoned. You can only  
21     use it in a certain way that is consistent with the  
22     zoning. It's regulated in other ways.

23     If the property is taken for all purposes, then it  
24     can be subject to a condemnation action, and the  
25     government would have to pay for taking that property.



1 That is not the case in this situation.

2 As far as the ability to regulate the property in  
3 that area, that's something that we are working on. And  
4 we are not going to regulate to the point that it takes  
5 a person's property so that they are required to be paid  
6 compensation.

7 MR. HOLZLI: Can I just ask you one question?

8 What statute is that that allows you to make deed  
9 modifications, and is it under -- would it be an eminent  
10 domain clause?

11 MR. RADCLIFFE: Well, no, it is not.

12 MR. HOLZLI: So there's no existing statute,  
13 correct?

14 MR. RADCLIFFE: The deed modifications that  
15 have been made so far -- the deed restrictions have been  
16 by private agreement, contractual agreement between the  
17 property owner and the City of Tomah.

18 MR. HOLZLI: And you did say they were --

19 MS. BILL: Excuse me. We're going to move on.

20 MR. HOLZLI: Okay. Thank you.

21 MS. BILL: Feel free to stay after the  
22 meeting.

23 Is there anyone who has a question that hasn't had  
24 an opportunity to ask one yet?

25 Okay. We can take another -- is there anyone that

1 would like to ask another question?

2 MR. JOHN PLEUSS: I want to come back up --

3 MS. BILL: We'll continue for about another  
4 five minutes.

5 MR. JOHN PLEUSS: It will take about five  
6 minutes.

7 MS. BILL: Okay.

8 MR. JOHN PLEUSS: John Pleuss. Who was the  
9 DNR person that authorized all the road building on part  
10 of my property? Are you DNR?

11 MS. BILL: Do you have an answer for that?

12 MS. KRAMER: I work for the Department of  
13 Natural Resources. Eileen Kramer. There is a provision  
14 in the law that allows -- now, I'm not -- maybe I better  
15 step back for a minute. Your question was authorized  
16 road building where?

17 MR. JOHN PLEUSS: On my property.

18 MS. KRAMER: On your property. That's  
19 something between you and the persons who performed that  
20 activity.

21 MR. JOHN PLEUSS: Well, nobody ever  
22 contacted --

23 MS. KRAMER: The Department of Natural  
24 Resources does not authorize activity on private  
25 property. We authorize activity, say, on the wetlands.

1 From the wetland aspect of it, we might, but in terms of  
2 action on a private property, no, we don't.

3 MR. JOHN PLEUSS: What were they doing in  
4 there then without my permission?

5 MS. KRAMER: You would have to talk to the  
6 parties who performed that activity, and I think you did  
7 actually, and I think --

8 MR. JOHN PLEUSS: Yeah. And I come up with  
9 just about nothing.

10 MR. FREHNER: I don't agree with that.

11 MR. JOHN PLEUSS: Well, it wasn't your  
12 property, was it?

13 MR. FREHNER: No, but I know that we talked  
14 about it. I know that there's written correspondence  
15 between companies we work for, our company and you, and  
16 I believe it's been resolved in writing.

17 MR. JOHN PLEUSS: Yeah. I got just about  
18 nothing out of it. I had no choice.

19 Are you the one that monitors the wells too?

20 MR. FREHNER: Our company does, yeah.

21 MR. JOHN PLEUSS: Yeah. I shut you guys off  
22 for awhile, and then I get a letter --

23 MR. FREHNER: Yes, you did.

24 MR. JOHN PLEUSS: I get a letter from the EPA,  
25 and it says I either let you back on there or I get

1     fined \$25,000 per day. So I didn't have any choice.  
2     And you sent me some little measly frickin' check. What  
3     am I going to do. The little guy does not have a  
4     chance. I got no time for the EPA, no time for the DNR  
5     because you guys ramrod everything right down our  
6     throat. We don't have any choice.

7         How can somebody go on somebody's property, tear it  
8     up with no permission, and say, well, we're sorry, and  
9     send you some measly little check?

10        Oh, and then when the City -- the permit that the  
11     City operates under specified no combustibles in the  
12     dump, but they permitted it anyway.

13        In 1967, there was a tanker load of fuel dumped out  
14     there. I got the paperwork here for it. It's in the  
15     City library. You can go there. Then they torched it.

16        And another thing the City did, when they were  
17     digging those trenches out there, they weren't supposed  
18     to dig anything below ground level, water level. When  
19     they got done digging them things, there was nothing but  
20     a big swimming pool, and they got away with it.

21        MS. BILL: What is your question for us  
22     pertaining to that?

23        MR. JOHN PLEUSS: What I'm saying is the City  
24     of Tomah should be responsible for the dump, and all  
25     they do is stick their head in the sand.

1 I got property that is worthless. The City does  
2 nothing.

3 MS. BILL: I think we've addressed that  
4 question earlier.

5 MR. JOHN PLEUSS: Yeah.

6 MS. BILL: Okay. We'll take one last  
7 question.

8 MR. THORSON: That would be me.

9 MS. BILL: Okay. State your name again,  
10 please.

11 \* \* \* \* \*

12 PUBLIC COMMENT PERIOD

13 MR. THORSON: Hi. I'm Pete Thorson. We meet  
14 here tonight under unfortunate circumstances. The  
15 landfill and the contaminates leaking from it, once  
16 again, are affecting adjacent property owners.

17 In 1993, we heard that we installed water to the  
18 residents of Sunnyvale. Today, we're taking care of the  
19 water to the Flatter area residents. What is it going  
20 to be tomorrow or when?

21 We understand that the City of Tomah International  
22 Papers here -- we understand that none of the City of  
23 Tomah or International Paper representatives here are  
24 responsible for the actions taken 25 or 30 years ago,  
25 but like any business, city and private businesses are

1 responsible for their actions.

2 MS. BILL: Excuse me. I'm going to interrupt  
3 just a second. Is this a question or is this a comment?

4 MR. THORSON: This is a comment, and it's  
5 about three more minutes.

6 MS. BILL: Okay. Then I'm going to officially  
7 say we're through with questions and answers, and we've  
8 moved on to the public comment period.

9 Let me just explain this again. During the public  
10 comments, we ask that you state your name for the  
11 record, you limit your comments to about three minutes.

12 We are not going to respond to those comments  
13 tonight. We're simply going to listen. But we will  
14 respond to them in writing at the time that we are  
15 making our final decision.

16 Okay. Go ahead, please.

17 MR. THORSON: Sorry. I didn't understand the  
18 procedure.

19 MS. BILL: That's fine. I'm sorry about that.  
20 Go ahead.

21 MR. THORSON: I'll continue. The EPA, the  
22 Environmental Protection Agency, our government agency  
23 responsible for preserving and protecting our  
24 environment have endorsed a less than acceptable  
25 proposal. This is appalling.

1       Your information of testing says nothing about the  
2       wildlife, the stream, or the conditions of Deer Creek  
3       and how it will be affected.

4       For four years, I have watched the DNR and the EPA  
5       try to regulate my property, my private property, within  
6       1600 yards of your contaminated landfill. To date, you  
7       have not proven that you have the regulatory authority,  
8       but you have spent thousand of dollars to try to prove  
9       that the same fill I put on my site is a pollutant when,  
10      in essence, this is the material that is cleaning our  
11      water for the public and the residents of Tomah.

12      I am tired of the selective discrimination process  
13      of your agency and its continued administration. These  
14      extremes on these properties so close to each other of  
15      regulating everything from -- everything to nothing  
16      brings me to this question. Where are your priorities?  
17      Thank you.

18           MS. BILL: Thank you.

19           Okay. Other comments?

20           MR. HOLZLI: I would like to make one.

21           MS. BILL: Sure. State your name again.

22           MR. HOLZLI: William Holzli. I haven't heard  
23      anything other than expense when it came to having any  
24      real significant data relative to the potential  
25      contamination or any accrued data you already have.

1 I would ask that if you -- and, obviously, you  
2 haven't conducted an environmental impact -- or produced  
3 an Environmental Impact Statement, correct? Has a study  
4 been done? Has an Environmental Impact Assessment been  
5 done? The lady from the EPA, can you address that  
6 question?

7 MS. BILL: We're no longer answering  
8 questions. We're --

9 MR. HOLZLI: Okay. Well, then I guess we're  
10 beyond that. If no one is going to claim that there is  
11 an Environmental Impact Statement, I would state for the  
12 record that I intend to address whichever entity or  
13 agency would be the receptive party to ask for an  
14 Environmental Impact Statement.

15 So I would hope that -- I left my address on the --  
16 when we registered to come in so I would hope I could  
17 get that correspondence in writing.

18 MS. BILL: We will respond --

19 MR. HOLZLI: My comment is that I intend to  
20 expound the question of the Environmental Impact  
21 Statement or a study to produce a statement for whatever  
22 concerns are the most prominent. And an obvious  
23 coalition is going to be formed because of the position  
24 of government in comparison to the citizen.

25 I apologize. It may seem rather convoluted, but,



1 again, I intend to make a request for an environmental  
2 impact study to produce an Environmental Impact  
3 Statement to whomever would be the receptive agency for  
4 that.

5 Presuming the EPA or the DNR, I would like -- and,  
6 again, you have my name for the record and my mailing  
7 address is on the registration. I would like whatever  
8 documentation has been produced relative to the  
9 Environmental Impact Assessment. Thank you.

10 MS. BILL: And we'll respond to that at a  
11 later time. Thank you.

12 Other comments? So no other comments?

13 \* \* \* \* \*

14 CLOSING COMMENTS

15 MS. BILL: Okay. We're going to end the  
16 meeting. As I said, if you'd like to submit a comment,  
17 please do so before the 24th of July. We'll be  
18 responding to that and making a cleanup decision most  
19 likely before October 1st, and we'll be around after the  
20 meeting to answer any of your questions. Thanks.

21 MS. BOONE: Bri, I think we should also tell  
22 them that there are documents in the library about the  
23 repository.

24 MS. BILL: Yes. Those of you have fact sheets  
25 in the back or got them in the mail, we have documents

1 in the library. We have some of our fact sheets posted  
2 on our web site, which is also on the fact sheet.  
3 Thanks.

4 (MEETING CONCLUDED )

5 (Meeting concluded at 8:20 p.m.)

6 (The ORIGINAL EXHIBITS were attached to the  
7 original transcript and copies supplied to  
8 both counsel.)

9 (The ORIGINAL TRANSCRIPT was provided to  
10 CH2MHILL and a copy to CH2MHILL.)

11 \* \* (END OF RECORD) \* \*

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1 STATE OF MINNESOTA

2 CERTIFICATE

3 COUNTY OF OLMSTED

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6 I, PAMELA J. FRANZ, Court Reporter, do hereby

7 certify that the foregoing pages, 1 - 66, inclusive,

8 are a true and correct transcript of my stenographic

9 notes.

10

11 WITNESS MY HAND AND SEAL, this 8th day of July,

12 2003.

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14 \_\_\_\_\_  
Notary Public

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